

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

RUCHELL CINQUE MAGEE,  
Petitioner,  
v.  
A.K. SCRIBNER  
Respondent.

**Case No.** 16-cv-6702-TEH

## **ORDER OF DISMISSAL**

DKT. NOS. 1, 4

Ruchell Cinque Magee has filed an ex parte motion for enforcement of a Rule 60(b) order that the Court construes as a pro se Petition for a Writ of Habeas Corpus under 28 U.S.C. § 2254. Petitioner has paid the filing fee. He has also filed a motion to disqualify the undersigned judge. Docket No. 4.

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This instant petition challenges Petitioner's 1975 conviction and life sentence from the Santa Clara Superior Court. His first federal Petition challenging this conviction and sentence was denied on May 10, 1995. See Magee v. Marshall, No. C-93-3637 DLJ, Docket No. 42. Petitioner has since filed many federal habeas and civil rights actions attacking the same conviction. On December 10, 2015, this Court dismissed as successive his most recently filed habeas petition challenging this conviction. See Magee v. Soto, No. C-15-5234 TEH, Docket No. 6.

A second or successive petition may not be filed in this Court unless Petitioner first obtains from the United States Court of Appeals for the Ninth Circuit an order authorizing this Court to consider the petition. See 28 U.S.C. § 2254(b)(3)(A). Petitioner has not obtained such an order from the Ninth Circuit. Accordingly, this Petition is DISMISSED without prejudice to refiling if Petitioner obtains the requisite Order.

Petitioner also seeks enforcement of a 2005 order that vacated a 1995 pre-filing review order in this Court. However, that pre-filing review order has been vacated and Petitioner's cases, including this case, have been reviewed. As noted many times, to proceed with a successive petition, Petitioner must obtain permission from the Ninth Circuit.

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For the foregoing reasons, Petitioner's petition for writ of habeas corpus (Docket No. 1) is DISMISSED without prejudice to refiling if Petitioner obtains the requisite Order from the Ninth Circuit. Petitioner's motion to disqualify the undersigned is DENIED as frivolous and meritless. Docket No. 4. Because reasonable jurists would not find the result here debatable, a certificate of appealability ("COA") is DENIED. See Slack v. McDaniel, 529 U.S. 473, 484-85 (2000) (standard for COA). The clerk shall close the file.

**IT IS SO ORDERED.**

Dated: 12/05/2016

Thelton E. Henderson  
THELTON E. HENDERSON  
United States District Judge